

§ 380.14

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of Energy Projects for review and comment and/or submission to the consulted agency. If the consulted agency fails to provide formal comments on the Biological Assessment to the project sponsor within 30 days of its receipt, as specified in 50 CFR 402.120, the project sponsor may notify the Director, OEP, and follow the procedures in paragraph (c) of this section.

(v) The consulted agency's comments on the Biological Assessment's determination must be filed with the Commission.

(c) *Notification to Director.* In the event that the consulted agency fails to respond to requests by the project sponsor under paragraph (b) of this section, the project sponsor must notify the Director of the Office of Energy Projects. The notification must include all information, reports, letters, and other correspondence prepared pursuant to this section. The Director will determine whether:

(1) Additional informal consultation is required;

(2) Formal consultation must be initiated under paragraph (d) of this section; or

(3) Construction may proceed.

(d) *Procedures for formal consultation.*

(1) In the event that formal consultation is required pursuant to paragraphs (b)(5)(v) or (c)(2) of this section, the Commission staff will initiate formal consultation with the FWS and/or NMFS, as appropriate, and will request that the consulted agency designate a lead Regional Office, lead Field/District Office, and Project Manager, as necessary, to facilitate the formal consultation process. In addition, the Commission will designate a contact for formal consultation purposes.

(2) During formal consultation, the consulted agency, the Commission, and the project sponsor will coordinate and consult to determine potential impacts and mitigation which can be implemented to minimize impacts. The Commission and the consulted agency will schedule coordination meetings and/or field visits as necessary.

(3) The formal consultation period will last no longer than 90 days, unless the consulted agency, the Commission, and project sponsor mutually agree to an extension of this time period.

(4) The consulted agency will provide the Commission with a Biological Opinion on the proposed project, as specified in 50 CFR 402.14(e), within 45 days of the completion of formal consultation.

[Order 603, 64 FR 26617, May 14, 1999, as amended by Order 699, 72 FR 45328, Aug. 14, 2007]

§ 380.14 Compliance with the National Historic Preservation Act.

(a) Section 106 of the National Historic Preservation Act, as amended (16 U.S.C. 470(f)) (NHPA), requires the Commission to take into account the effect of a proposed project on any historic property and to afford the Advisory Council on Historic Preservation (Council) an opportunity to comment on projects if required under 36 CFR 800. The project sponsor, as a non-Federal party, assists the Commission in meeting its obligations under NHPA section 106 and the implementing regulations at 36 CFR part 800 by following the procedures at § 380.12(f). The project sponsor may contact the Commission at any time for assistance. The Commission will review the resultant filings.

(1) The Commission's NHPA section 106 responsibilities apply to public and private lands, unless subject to the provisions of paragraph (a)(2) of this section. The project sponsor will assist the Commission in taking into account the views of interested parties, Native Americans, and tribal leaders.

(2) If Federal or Tribal land is affected by a proposed project, the project sponsor shall adhere to any requirements for cultural resources studies of the applicable Federal land-managing agencies on Federal lands and any tribal requirements on Tribal lands. The project sponsor must identify, in Resource Report 4 filed with the application, the status of cultural resources studies on Federal or Tribal lands, as applicable.

(3) The project sponsor must consult with the SHPO(s) and THPOs, if appropriate. If the SHPO or THPO declines to consult with the project sponsor, the project sponsor shall not continue with consultations, except as instructed by the Director of the Office of Energy Projects.

(4) If the project is covered by an agreement document among the Commission, Council, SHPO(s), THPO(s), land-managing agencies, project sponsors, and interested persons, as appropriate, then that agreement will provide for compliance with NHPA section 106, as applicable.

(b) [Reserved]

[Order 603, 64 FR 26618, May 14, 1999, as amended by Order 699, 72 FR 45329, Aug. 14, 2007; Order 756, 77 FR 4895, Feb. 1, 2012]

§ 380.15 Siting and maintenance requirements.

(a) *Avoidance or minimization of effects.* The siting, construction, and maintenance of facilities shall be undertaken in a way that avoids or minimizes effects on scenic, historic, wildlife, and recreational values.

(b) *Landowner consideration.* The desires of landowners should be taken into account in the planning, locating, clearing, and maintenance of rights-of-way and the construction of facilities on their property, so long as the result is consistent with applicable requirements of law, including laws relating to land-use and any requirements imposed by the Commission.

(c) *Safety regulations.* The requirements of this paragraph do not affect a project sponsor's obligations to comply with safety regulations of the U.S. Department of Transportation and recognized safe engineering practices for Natural Gas Act projects and the National Electric Safety Code for section 216 Federal Power Act projects.

(d) *Pipeline and electric transmission facilities construction.* (1) The use, widening, or extension of existing rights-of-way must be considered in locating proposed facilities.

(2) In locating proposed facilities, the project sponsor shall, to the extent practicable, avoid places listed on, or eligible for listing on, the National Register of Historic Places; natural landmarks listed on the National Register of Natural Landmarks; officially designated parks; wetlands; and scenic, recreational, and wildlife lands. If rights-of-way must be routed near or through such places, attempts should be made to minimize visibility from areas of public view and to preserve the

character and existing environment of the area.

(3) Rights-of-way should avoid forested areas and steep slopes where practical.

(4) Rights-of-way clearing should be kept to the minimum width necessary.

(5) In selecting a method to clear rights-of-way, soil stability and protection of natural vegetation and adjacent resources should be taken into account.

(6) Trees and vegetation cleared from rights-of-way in areas of public view should be disposed of without undue delay.

(7) Remaining trees and shrubs should not be unnecessarily damaged.

(8) Long foreground views of cleared rights-of-way through wooded areas that are visible from areas of public view should be avoided.

(9) Where practical, rights-of-way should avoid crossing hills and other high points at their crests where the crossing is in a forested area and the resulting notch is clearly visible in the foreground from areas of public view.

(10) Screen plantings should be employed where rights-of-way enter forested areas from a clearing and where the clearing is plainly visible in the foreground from areas of public view.

(11) Temporary roads should be designed for proper drainage and built to minimize soil erosion. Upon abandonment, the road area should be restored and stabilized without undue delay.

(e) *Right-of-way maintenance.* (1) Vegetation covers established on a right-of-way should be properly maintained.

(2) Access and service roads should be maintained with proper cover, water bars, and the proper slope to minimize soil erosion. They should be jointly used with other utilities and land-management agencies where practical.

(3) Chemical control of vegetation should not be used unless authorized by the landowner or land-managing agency. When chemicals are used for control of vegetation, they should be approved by EPA for such use and used in conformance with all applicable regulations.